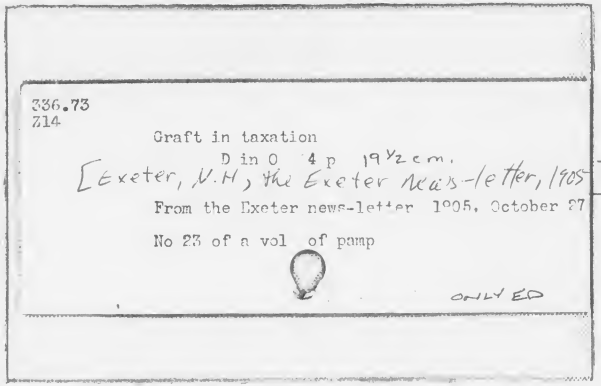
Graft in taxation

[Exeter, N.H.]
[1905]



GRAFT IN TAXATION.

[From the Exeter News-Letter, October 27, 1905.]

EDITOR EXETER NEWS-LETTER.—Now that the public is taking so much interest in other forms of graft, it may be a good time to call attention to the extent to which the minority are being plundered by the majority by means of laws imposing upon the minority taxes which the majority do not have to pay, but which enable the latter to avoid a part of their own share of the public expense. A system of taxation under which all property in the state is subject to a tax proportional to its value is fair, not merely because the benefit received from government protection is proportional to its value, but because the price paid for the property is based on its liability to tax. There is, therefore, the same justice in the owners paying the tax that there is in the purchaser of mortgaged property paying the mortgage. In either case the purchaser has paid a lower price than if it were free from tax or mortgage. The fairness of such a system is self-adjusting. But many people do not want a fair system of dividing public expenses, and so they endeavor to procure the enactment of laws by which they can compel their neighbors to pay more than their share. And in this they are sometimes successful, since some supreme courts have not been bright enough to comprehend the injustice of such legislation, or to detect the fallacy in the arguments by which it is defended. Fortunately this has not been the case in New Hampshire.

Conspicuous examples of such legislation are the recent stock transfer tax in New York, the law of long standing in Massachusetts under which its citizens are taxed for property located and taxed in other states, but never receiving the least benefit from the public expenditure of Massachusetts and the collateral inheritance tax of a considerable number of states.

The owner of shares in a corporation has the same right to sell them as the owner of any other property. Such sales add nothing to the expenses of the state, and constitute no reason for imposing a tax on the seller when there is no similar tax on sales of other property. But a majority of the people of New York wanted such a tax because they would not have to pay it, and so the law was enacted. Whether the New York courts will uphold its constitutionality remains to be seen.

In Massachusetts an attempt is occasionally made to do away with the wrong of taxing its citizens on property located and taxable in other states, but there is always a majority who have a pecuniary interest in retaining the law as it is, and so the wrong goes on. In commenting on this system our own supreme court in the case of Robinson vs. Dover, 59 N. H., 527, used this language: "By the rule of inequality Massachusetts can compel her citizens to pay a Massachusetts tax upon all New Hampshire land owned by them as well as a double tax upon their Massachusetts land, because by that rule taxation is not an equal division of public expense, but such an arbitrary exaction as pleases a lawless government. Under that rule the question in what state property is taxable is immaterial, for the citizen has no right of property against a government vested with a discriminating and unlimited power of confiscation, exercised by a process erroneously called taxation."

In 1878 a majority of the New Hampshire legislature thought it saw a chance to get money out of certain express companies. So it imposed a tax of two per cent. on the gross

receipts of all express companies doing business over railroad lines, no similar tax being imposed on express business not done over railroad lines, nor on any other kind of business. Our supreme court in the case of State vs. United States and Canada Express Co., 60 N. H., 219, held the law unconstitutional. I make a few extracts from their opinion: "In the supposed state of nature men exercise the natural, essential and inherent right of acquiring and possessing property as best they can. By mutual agreement, establishing an agency called government, they impose upon it various duties, including that of protecting the natural and reserved right of acquisition and possession, and the duty of enforcing every one's obligation to contribute his share of the expense. Equally free and independent, they do not agree to contribute disproportionally . . . . And so long as constitutional government continues to be the execution of a written agreement, creating a limited agency for the purchase of common benefit, protection and security, by proportional contribution, the contract can no more be executed by an unequal division of the expense, than the right of property can be protected by such an unauthorized extinguishment of it. . . .

"Whether it is a tax imposed upon person, property, income, business, gross receipts, profits, or earnings, is immaterial. It is a tax which one class of men are required to pay and from which all others are exempt. It is a perfect example of unequal division of public expense. It does not tend towards equal right by any degree of approximation, but is as distant as possible from it, and diametrically opposite to it. It is inequality pure and simple. There are other objections which need not be considered, because this one is decisive. If a special discriminating tax of two per cent. could be taken from one class of men alone, a similar tax of one hundred per cent. could be taken from any man, any family, or any class of men; one man, one family, or one class could be singled out, and compelled to pay all the expense of the common benefits of government, and all others could thus be discharged from their constitutional obligation to contribute their shares."

The same legislature imposed a tax of one per cent. on inheritances, exempting those passing to husband, wife, children or grandchildren, so that all the money raised in this way would be paid by a minority of estates. The supreme court in Curry vs. Spencer, 61 N. H., 624, held this tax unconstitutional, saying that "it is plainly founded upon pure inequality, and is simply extortion in the name of taxation."

And now comes the legislature of 1905, and in the face of this decision enacts an inheritance tax law even more outrageous than the previous one, the exemptions being more numerous, and the rate five times as high. It is true that there was recently added to the constitution a clause giving the legislature power to tax "property passing by will or inheritance." But that does not give it the power to tax some inheritances and not others, any more than the original clause giving power to tax "all estates" authorized it to tax some farms and not others. The requirement that all taxes shall be proportional is still a part of the constitution.

An inheritance is simply inherited property. A collateral inheritance is not a different kind of property from a direct inheritance. The adjectives only apply to the relationship of the parties, not to the property. A thousand dollars inherited from an uncle makes a man no richer than if it came from his brother or father. A man's ability to pay taxes depends on what he has to pay with, not on how he came by it. If the very same property can be treated as a different kind of property according as it passes by will to a brother or a cousin, then the same house could be made subject to or exempt from tax according as the occupant was black or white, non-union or union, if the majority so decided.

Consider the absurdities that might result

if this law could be upheld. A woman leaves ten thousand to her sister and one thousand to the sister's little girl. The sister will pay no tax, but the little girl must pay the state fifty dollars. A man inheriting five thousand from a cousin worth eleven thousand must pay two hundred and fifty, but his neighbor inheriting nine thousand from a cousin worth ten thousand will pay nothing. A man leaves a hundred thousand to a brother already rich, and there will be no tax on it, but from the ten thousand that he leaves for the support of a disabled cousin the state will grab five hundred.

The owner of property has as good a right to make a gift of it take effect at his death as at any other time. No one else is injured by it, nor is there any "constructive recess" between the two ownerships. The heir is entitled to the property not because of any natural right to inherit, but because he has a natural right to receive what is given him, and the previous owner has shown his intention either by making a will, or by forbearing to make one in case the statute of distribution coincides with his wishes. The person receiving a gift from one having the right to give it has the same title as the giver, and his rights are none the less because some people see fit to call it a windfall. There is no reason why he should be forced to give a slice of it to people who would not dream of helping him if he lost a like amount by accident or embezzlement.

I am informed that a man who appeared before the committee of a state legislature to urge the adoption of a collateral inheritance tax, described a rich man of that state, whose property would probably go to his nephew, who, the speaker claimed, had done nothing to deserve it, and added "Now we shall get a slice of it." Was not that an appeal to that committee to report a bill favoring their own pocket books at the expense of some of their constituents?

Our ancestors established and we maintain a government to protect our natural rights, not to impair them. We are dependent on the legislature to make laws governing the descent and distribution of estates, but it is their duty to make those laws such as will most likely meet the wishes of those who may die intestate. Persons who have outlived their near relatives have to contribute the same as others to the expenses of government, and are equally entitled to its aid in the enjoyment of their property, including whatever satisfaction comes from the assurance that when they are gone it will be distributed in accordance with their wishes.

Those without near relatives are more likely to make bequests to public charities, but they have a right to use their own discretion, and they may have relatives and friends as needy and deserving as any exempt institutions. They certainly will not feel any more generously inclined towards a public that asserts the right to take arbitrarily from their estates any fraction that it has the face to demand through its legislature. A state treasury is not a proper object of charitable bequest, because money given to it would be practically a present to the taxpayers of the state in proportion to the amount of their taxes. I suppose the largest taxpayer in Massachusetts is the Boston and Albany railroad. But this road is under lease to the New York Central, which assumes all taxes. It follows therefore that when a New Hampshire woman leaves to her invalid niece a thousand dollars deposited the week before in a Lowell savings bank, and the state of Massachusetts confiscates fifty of it under the name of an inheritance tax, the party getting the most benefit from that fifty dollars is the New York Central railroad.

It is no justification of such a tax to say that "other states have it." That argument would have justified free rum or negro slavery.

We ought all to be willing to pay our fair share of the expense of the protection afforded by government, and to have any corporations that we may be interested in do the

same, but what is our fair share does not depend on how we are related to some one else. The legislature has only such powers as are given it by the constitution, and when it attempts "extortion in the name of taxation," it is our duty to resist. So it is to be hoped that no tax will be paid under the new law without a contest before the proper tribunal.

Any one inclined to disagree with the above views is invited to read in full the unanimous opinions from which I have quoted. Realizing how many otherwise good men have been led by false reasoning to endorse slavery, wars of conquest, and other wrongs, I wish to disclaim attacking any individual's honesty of intention. EQUAL RIGHTS.

The following paragraphs treat of a few fallacies which came to the writer's notice after the original article was published:

1. It has been held that an inheritance tax is not open to the objection of double taxation, because it is not a tax on the property, but on the "right to inherit." If a tax based on the value of certain property, and being a lien thereon until paid, is not a tax on that property, what constitutes a tax on property? Until the death of the owner, no one has the "right to inherit." The same instant that he dies the right of the heir vests. The law does not give him the ownership and a "right to inherit" in addition. The death of a man worth ten thousand dollars does not enrich his heirs to the extent of twenty thousand dollars, ten thousand dollars worth of property and ten thousand dollars worth of "rights to inherit." The "right to inherit" and ownership by inheritance are simply different descriptions of the same fact. If the judges who upheld that fallacy had taken their next dinner at a hotel, and had been charged full price for dinner and an additional sum for the right to dine at that hotel, they would have had no doubt of its being a case of double taxation. Except as it is identical with ownership by inheritance, the "right to inherit" has no more existence than the equator. Whoever has the "right to inherit" is already the owner and subject to annual taxation like any owner. The inheritance tax is plainly an additional tax on the property, the passing of the title under the laws of inheritance being merely the time when that additional tax is imposed.

2. In a state whose constitution, in addition to other taxes, authorized "duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured or being within" the state, it was held that the "right to inherit" was taxable as a "commodity." This reminds one of the custom house ruling that frogs' legs are poultry. Have judges any more right than witnesses to twist words from their usual meaning? In interpreting a constitution or other document, are they at liberty to assign to words any meaning that any writer has ever attached to them, regardless of the improbability that the signers intended any such meaning?

3. To justify exempting the direct descendants of the rich from contributing like other people to the public expense, one court held that as the collateral relative has less moral claim, so his privilege may be deemed more valuable. Can any sane man be found who would give even thirty cents more for the "right to inherit" a five thousand dollar farm from his uncle than he would give for the "right to inherit" a similar farm from his grandfather?

Our chief guaranty against unjust legislation lies in the fact that ordinarily legislators are themselves subject to the laws they enact. If a tax is imposed from the burden of which a large majority of them are exempt, while sharing the benefit of its expenditure, that guaranty is lost. Such a law does not represent the unbiased judgment of the legislature.

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